SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 295

UNITED STATES OF AMERICA, APPELLANT,

vs.

GEORGE I. WITKOVICH, ALSO KNOWN AS JURI ISADOR WITKOVICH

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

INDEX

	Original	Print
Record from the United States District Court for the Northern District of Illinois, Eastern Division	...	1
Placita (omitted in printing)	1	
Indictment	3	1
Defendant's motion to dismiss indictment	8	3
Memorandum of the Court overruling the motion to dismiss the indictment	15	7
Motion of United States for clarification of the Court's ruling denying defendant's motion to dismiss indictment	22	12
Defendant's Additional and supplemental motion to dismiss indictment	25	13
Memorandum of the Court, Sullivan, J.	31	16
Order dismissing indictment	47	26
Notice of appeal	49	26
Stipulation as to record	54	28
Order of supervision of the U.S. Department of Justice, Immigration and Naturalization Service	55	28
Record of sworn testimony given by the defendant	57	32
Order re stipulation as to record	76	51
Docket entries	77	52
Clerk's certificate (omitted in printing)	79	
Order noting probable jurisdiction	80	54

PLACITA

(Omitted in printing)

[File Endorsement Omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 55 CR 607

(Section 1252(d), Title 8, United States Code)

UNITED STATES OF AMERICA

vs.

GEORGE I. WITKOVICH,

also known as

JURI ISADOR WITKOVICH

INDICTMENT—filed November 3, 1955

The October 1955 Grand Jury charges:

That on or about September 14, 1954, at Chicago, Illinois, in the Northern District of Illinois, Eastern Division,

GEORGE I. WITKOVICH,

also known as JURI ISADOR WITKOVICH,

the defendant, who was then and there an alien against whom an order of deportation theretofore had issued and been outstanding more than six months, which said order of deportation was then and there a final order, having become final under administrative process on June 25, 1953, and whose departure from the United States under the order of deportation had not been effected within such six-month period, and who was then and there, pending eventual deportation subject to supervision, who was then and there required to and did appear before an officer of the Immigration and Naturalization Service, and who was then and there required to give information under oath as to his nationality, circumstances, habits, associates and activities, as pre-

scribed by the provisions of the Immigration and Nationality Act of 1952 (Title 8, United States Code, Section 1252 (d) (3)) and Section 242.3 (c) (3), Title 8, Code of Federal Regulations, as amended, did willfully fail to answer and reply to the following questions, to wit,—

4 (a) Q. Do you subscribe to the Daily Worker?

(b) Q. Mr. Witkovich, can you read in any other language other than Slovene and English?

(c) Q. Since the order of supervision was entered on March 4, 1954, have you at any time visited the office of the "Narodny Glasnik", 1413 West 18th Street, Chicago, Illinois?

(d) Q. Since the order of supervision was entered on March 4, 1954, Mr. Witkovich, have you ever visited the offices of the Bohemian publication "Nova Dova" or the Slovakian publication "Ludovy Noviny", 1510 West 18th Street, Chicago, Illinois?

(e) Q. Do you know the editor of the "Narodni Glasnik"?

(f) Q. Do you know Leo Fisher?

(g) Q. Do you know Anton Minerich?

(h) Q. Do you know Nick Rajkovich?

(i) Q. Do you know Arsenio Bartl?

(j) Q. Do you know John Zuskar?

(k) Q. Do you know Calvin Brook?

(l) Q. Since the order of deportation was entered in your case on June 25, 1953 have you attended any meeting of the Communist Party of the U.S.A.?

(m) Q. Since the order of supervision was entered on March 4, 1954 have you attended any meeting of any organization other than the singing club?

(n) Q. Have you addressed any lodges of the Slovene National Benefit Society requesting their aid in your case, since the order of deportation was entered June 25, 1953?

(o) Q. Have you distributed petitions or leaflets published by the Slovene National Benefit Society seeking aid for you, in your behalf, in your deportation case since the order of deportation was entered June 25, 1953?

5-7 (p) Q. Since the order of supervision have you attended any meetings or lectures at the Peoples

Auditorium, 2457 West Chicago Avenue, Chicago, Illinois?

(q) Q. Since the order of supervision was entered against you have you attended any meetings or socials at the Chopin Cultural Center, 1547 North Leavitt Street, Chicago?

(r) Q. Have you attended any movies since your order of supervision was entered at the Cinema Annex, 3210 West Madison Street, Chicago?

(s) Q. Are you acquainted with an individual named Irving Franklin?

(t) Q. Are you now a member of the Communist Party of U.S.A.?

(u) Q. Are you now or have you ever been a member of the Slovene American National Council?

(v) Q. Are you now or have you ever been a member of the United Committee of South Slavic Americans?

: in violation of Section 1252(d), Title 8, United States Code.

A TRUE BILL:

JOHN GAVERAS,
Foreman

R. TIEKEN,
United States Attorney

8 IN THE UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO DISMISS INDICTMENT—filed December 12, 1955

Now comes George I. Witkovich, defendant in the above entitled cause, and moves the court to dismiss the indictment herein for the following reasons:

1. Said indictment does not charge a crime under the laws of the United States.

2. Mere failure or refusal to answer questions is not a crime under any law known to Anglo-American jurisprudence.

3. Failure to answer questions as they appear in the indictment does not denote criminal conduct and cannot form the basis of a criminal prosecution.

4. Said indictment does not show that said final order of

deportation was based on a fair hearing nor does it show that the order is based on reasonable, substantial and probative evidence as required by statute.

5. Said indictment does not show that due process was had by the defendant in the deportation hearing on which the deportation order is based.

6. Said indictment does not show how or why the defendant's departure from the United States under the order of deportation had not been effected within a six month period.

7. Said indictment does not show that said order of deportation had not been effected through any fault of the defendant.

8. Said indictment does not show to which country the defendant was ordered deported.

9. Said indictment alleges an order of deportation was entered against the defendant on June 25, 1953, and shows no further action by the government to enforce said deportation order, nor why said deportation had not been effected.

10. Said indictment does not specify under what law, if any, the defendant is deportable, or under what law he was ordered deported.

11. Said indictment does not show under what paragraphs of section 1251 (4) the defendant was ordered deported.

12. Said indictment is violative of due process in that by virtue of section 1252 (a), (b), (1), (2), (3), (4), (c) (a) Title 8, U.S.C. it deprives the defendant of his right to a jury trial and the requisite forms of criminal procedure in that it delegates to an administrative body or purports to delegate to an administrative body the determination of the issue of deportation and the determination of the essential elements of a criminal offense allegedly arising from the determination of the issue of deportability, the commission of which alleged offense subjects the defendant to imprisonment in the penitentiary and the deprivation of his liberty and property.

13. Said indictment avers an order of deportation which is a mere administrative proceeding without the well recognized and long established protective devices guaranteed to persons accused of crime, and therefore cannot legally form the basis of a criminal prosecution resulting in denial of liberty.

14. The indictment is vague, uncertain and ambiguous and does not meet the requirements of the first, fifth and sixth amendments to the constitution.

15. The indictment does not set forth the terms and provisions of the alleged order of deportation or the substance thereof.

16. The indictment does not state facts sufficient to constitute a description of the offense which it purports or alleges to charge.

17. The indictment does not show that the alleged order of deportation was served on the defendant nor that he had notice or knowledge of the terms and the provisions thereof.

18. Said indictment does not allege that the defendant is an alien resident in the United States contrary to law.

19. Said indictment is based on a law and the various sections thereof which are unconstitutional and void.

20. The alleged order of deportation and the alleged supervision of the defendant as prescribed by the Immigration & Nationality Act, Title 8 U.S.C., section 1252 (d) (e) are civil orders and cannot be enforced by criminal process.

11 21. The statutory requirements and the regulations and restrictions placed upon the conduct and activities of the defendant are unconstitutional, invalid, illegal and void, they are unreasonable and an abuse of power and contrary to the first, fifth, sixth, ninth and tenth amendments to the constitution.

22. The statute is invalid on its face as a violation of procedural due process under the fifth amendment, in that it makes the administrative decision conclusive on the criminal trial court and permits the administrative decision to control the criminal trial court without a jury or the full measure of criminal proof. The criminal consequences attached to a deportation order by the statute, as aforesaid, render it as applied to the defendant, a bill of attainder and ex post facto law in violation of Article I, section 9.

23. The statute and the administrative regulations provide for, and the orders impose, restrictions upon the defendant's liberty under circumstances where the power to deport cannot be carried out. The power to detain an alien or to substitute conditions restrictive of his liberty may exist

constitutionally only as an incident to and in aid of the power to deport or to exclude.

24. Section 1252 (d) Title 8 U.S.C. does not permit inquiry into the correctness or validity of the order. Under it a deportation order is made to carry potential criminal consequences and the administrative decision upon the issue of unlawful presence is made conclusive upon the criminal trial court, thus permitting this vital element of a crime to be established without a jury trial.

12

25. Adjudication that the defendant is subject to deportation is not made by procedures constitutional for judgment of crime, and the government cannot be permitted to use the result as a conclusive determination of that fact in a criminal proceeding.

26. Section 242.3 (c) (3) Title 8, Code of Federal Regulations as amended, is not authorized by Section 1252 (d) Title 8 U.S.C. and is an assumption of power not authorized by law, and is an abuse of any power delegated to the attorney general under section 1252 (d) 8 U.S.C.

27. The Act does not permit the court or jury which tries the defendant for this crime to pass on the illegality of his presence in the United States, or on the legality of the order of deportation.

28. Section 1252 (d), Title 8 U.S.C. unlawfully delegates legislative power in that the section establishes no policy or rule or principle to limit or guide the attorney general in framing regulations which constitute his supervision of aliens. Here there is an attempt to make criminal acts which are non-criminal, to wit, failure to answer questions, and to impose punishment for failure to speak, beyond the penalties prescribed by congress.

13-14

29. Section 1252 (d) Title 8 U.S.C. on its face is so vague and indefinite as to permit the imposition of restrictions of protected liberties, and as applied to the defendant by the orders of supervision, impose restrictions on the defendant's rights under the first, fourth and fifth amendments.

30. The restrictions imposed upon the conduct and activities of the defendant by section 242.3 (c) (3) Title 8, Code of Federal Regulations, as amended, are unreasonable, unauthorized, are an assumption of power not delegated by

the Act and are in violation of 8 U.S.C. 1252 (d) and of the fifth, sixth, ninth and tenth amendments to the constitution.

Respectfully submitted,
PEARL M. HART,
Attorney for Defendant

PEARL M. HART,
Attorney for Defendant
30 N. La Salle St.
Chicago 2, Illinois
Phone: STate 2-3213

15 IN THE UNITED STATES DISTRICT COURT

No. 55 CR 607

UNITED STATES OF AMERICA

vs.

GEORGE I. WITKOVICH,
also known as
JURI ISADOR WOTKOVICH

MEMORANDUM—February 15, 1956

This is an indictment under Title 8 U.S.C. §1252 (d), which reads:

"(d) Any alien, against whom a final order of deportation as defined in subsection (c) of this section, heretofore or hereafter issued has been outstanding for more than six months, shall, pending eventual deportation, be subject to supervision under regulations prescribed by the Attorney General. Such regulations shall include provisions which will require any alien subject to supervision (1) to appear from time to time before an immigration officer for identification; (2) to submit, if necessary, to medical and psychiatric examination at the expense of the United States; (3) *to give information under oath as to his nationality, circumstances, habits, associations, and activities,* and *such other information, whether or not related to the foregoing, as the Attorney General may deem fit and proper;* and (4) to conform to such reasonable written restrictions on his conduct

or activities as are prescribed by the Attorney General in his case. Any alien who shall willfully fail to comply with such regulations, or *willfully fail to* appear or to *give information* or submit to medical or psychiatric examination if required, or knowingly give false information in relation to the requirements of such regulations, or knowingly violate a reasonable restriction imposed upon his conduct or activity, shall upon conviction *be guilty of a felony*, and shall be fined not more than $1,000 or shall be imprisoned not more than one year, or both." (Underscoring added)

A motion to dismiss the indictment, attacking the constitutionality of the statute, is now before the court. The charge is that defendant violated clause (3), underlined above, in that he willfully failed to answer certain questions which are set forth in the indictment. There is no allegation that he refused to appear, to submit to a medical or psychiatric examination, or to submit to reasonable restrictions on his conduct; these requirements are not, therefore, directly involved, although incidental consideration of them is necessary.

The parties agree that this Act is an exercise by Congress of the power of the United States as a sovereign state to deal with aliens within its territory (*Carlson v. Landon*, 342 U.S. 524 (1952); *United States v. Tandaric*, 152 F.2d 3, 5 (C. A. 7, 1946; cert. den 327 U.S. 786)). To be upheld, it must constitute a valid delegation of that power to the Attorney General, in terms definite enough to form a standard of guidance for his conduct (*Winters v. New York*, 333 U.S. 507, 515 (1947); *Lichter v. United States*, 334 U.S. 742, 786 (1948)). Whether it does or not can be determined only by an examination of the section in its context: Title 8 U.S.C.A. 1251 *et. seq.*, and the cases which have interpreted those sections. Section 1251 provides that any alien in the United States shall be deported upon the order of the Attorney General for causes there set forth; section 1252(b) prescribes the procedure for the entry of such an order. Pending determination of deportability, an alien may in the discretion of the Attorney General be continued in custody, or released on bond or conditional parole (Section 1252(a)), The Attorney General's discretion under this section is not

unlimited, but may be reviewed by the courts to determine whether he acted reasonably (*U. S. v. Shaug-nessy*, 212 F.2d. 128 (C.A. 2, 1954); *U. S. v. Holton*, 205 F.2d 228, 230 (C.A. 7, 1953); *Ocon v. Landon*, 218 F.2d 320, 324 (C.A. 9, 1954)). After the entry of a final deportation order,
17 the Attorney General is given six months within which to "effect the alien's departure", during which the alien may be detained or released on bond. (Sec. 1252(c)). The alien must be released from detention sooner than six months if it appears that there is no reasonable possibility of his being deported in the forseeable future (*U. S. v. District Director of Immigration*, 117 F. Supp. 541 (S. D. N. Y., 1953); *U. S. ex. rel Cefalu v. Shaughnessy*, 117 F. Supp. 473 (S. C. N. Y., 1954)). Although this subsection provides that after the six-months period, if deportation has not been effected, the alien "shall become subject to such further supervision and detention pending eventual deportation as is authorized in this section", it has been held that "and detention" is surplusage, the period of detention must terminate after six months, and the alien thereafter be subject only to such detention as may result from a violation of the supervision provisions of subsection (d)(3). (*U. S. ex. rel Youw v. Shaughnessy*, 102 F. Supp. 799, 801 (S.D. N.Y., 1952); *U. S. ex. rel Blankenstein*, 177 F. Supp. 699 (S.D. N.Y., 1953)). The last-named section is the one here considered, and has been quoted in full; the regulations are in substantially the language of the statute. Subsection (2) provides that wilfull refusal or failure to depart after an immigration order is final shall be a felony; Section 1253 relates to the countries to which the Attorney General shall deport the aliens.

It is apparent from this summary of the deportation procedure that after the entry of a final order of deportation, the sole remaining power and duty of the Attorney General is to make sure that the alien departs from the country. It follows that the powers of supervision given him are
18 intended as an aid in enforcing this power by making certain that the alien will be available for deportation when and if the time comes that this is possible. Clauses (1), (2), and (4) of the same subsection are reasonably calculated to fulfill this purpose. Clause (1), requiring the alien to submit himself for identification is clearly helpful to that

end; the requirement of physical examinations might be necessary to deportation to a particular country; and in (4), "to conform to such reasonable written restrictions on his conduct or activities as are prescribed by the Attorney General in his case", the word "reasonable" may be read as "those restrictions which tend to guarantee his availability for deportation". The same may be said of clause (3), of immediate concern here: "to give information * * * as to his nationality, circumstances, habits, associations, and activities, and such other information, whether or not related to the foregoing, as the Attorney General may deem fit and proper". This must be read to mean such information as is necessary to enable the Attorney General to be certain that the alien is holding himself in readiness to answer the call to be deported when it comes.

The Government urges that the Attorney General may, under this section, question the alien to determine not only his availability for deportation, but also to satisfy himself that the activities for which the alien was ordered deported are not continuing. There is no warrant for such an interpretation, since the Attorney General is powerless to take any further action even if they are continuing. A deportation order is not a magic incantation, but a finding that the alien is, for one reason or another, an undesirable resident of this country. Further, it is an order entered in
19 a civil proceeding, in which proof is by "clear and convincing" evidence, rather than beyond a reasonable doubt (*Schneiderman v. United States*, 320 U.S. 118 (1943)), in which counsel need not be appointed (*U. S. v. Vander Jagt*, 133 F. Supp. 676 (W.D. Mich., 1955)), and hearsay evidence may be admitted (*Navarette-Navarette v. Landon*, 22 3 F.2d 234 (C.A. 9, 1955)).

There is accordingly no justification for allowing a deportation order to accomplish more than its intended purpose. It establishes, in a hearing adequate for this end, that the alien shall depart this country and nothing more. The Attorney General has been given power to supervise the alien to make sure he is available for deportation, and no further power. If, after the entry of the order, the alien engages in activity punishable under the Criminal Code, the Attorney General is at liberty to bring him before a Grand Jury and move for an indictment in the usual way. If he is

not engaging in such activity, and if it is physically impossible to deport him, and if increasing numbers of aliens in this situation has created a serious problem, then Congress may solve it by giving some official definite and measurable power to deal with the dilemma. So far it has not done so, except to the extent that it has given the Attorney General the powers of supervision here considered.

This discussion has dealt with most of the objections urged by the defendant. He also urges that the statute creates a crime by legislative fiat, leaving the court nothing to do but to pronounce sentence in a summary proceeding (*Wong Wing v. United States*, 163 U.S. 228, 236 (1896)), and that procedural due process has been violated. That is not the case when the statute is correctly interpreted. The court will determine the relevancy of the questions by a definite standard: do they assist the Attorney General in making certain that the alien will be available for deportation.

Defendant also contends that the statute here considered violates the First Amendment guarantee of freedom of speech, of which freedom of silence has been assumed to be a part (*United States v. O'Conner*, 135 F. Supp. 590 (D.C., 1955), and cases cited page 596). However, speech may be compelled by Congress, and silence punished, when special circumstances warrant restrictions on traditional freedoms. Thus Title 2 U.S.C. Sec. 192 making it an offense punishable by fine or imprisonment to fail to answer proper questions asked by Congressional committees has been upheld (*In Re Chapman*, 166 U.S. 661, 672 (1896); *United States v. Bryan*, 339 U.S. 323, 327 (1949)). Under this statute, however, questions must be relevant to the Congressional power to legislate (*Quinn v. United States*, 349 U.S. 155, 162 (1955); *Watkins v. United States*, C.A., D.C., 1/26/56, 24 L.W. 2329), just as in the instant case they must relate to the valid power of the Attorney General.

The motion to dismiss the indictment is overruled.

PHILIP L. SULLIVAN,
Judge

Dated: February 15, 1956

[File endorsement omitted.]

22 IN THE UNITED STATES DISTRICT COURT

[Title Omitted]

MOTION FOR CLARIFICATION OF COURT'S RULING DENYING DEFENDANT'S MOTION TO DISMISS INDICTMENT—filed February 28, 1956

Now comes the United States of America by R. Tieken, United States Attorney for the Northern District of Illinois, and moves the Court for clarification of its ruling on Defendant's Motion to Dismiss, and in support thereof respectfully represents:

That in a Memorandum of Opinion announced February 15, 1956, the Court has denied defendant's motion to dismiss the indictment herein; that in its memorandum the Court has rejected the Government's contention that under the statute involved, Section 242(d)(3) of the Immigration and Nationality Act of 1952 (8 USC 1252(d)(3)), the Attorney General may question aliens ordered deported on matters other than their availability for deportation; that questions constituting the gravamen of the crime have been specifically set forth in the indictment and challenged by defendant's motion to dismiss (Point 1), which alleges that the
23 "indictment does not charge a crime under the laws of the United States"; that the aforesaid motion directly attacks the legality of the questions set forth in the indictment and calls for a ruling under the law announced in the Court's Memorandum of Opinion;

WHEREFORE, it is respectfully prayed:

(1) That the Court allow oral argument directed to the sufficiency of the indictment; and

(2) That the Court rule on the legality of the questions alleged in the indictment and state whether or not the Government is entitled to introduce evidence that the questions were propounded and that the defendant did willfully fail to reply as alleged in the indictment.

R. TIEKEN
United States Attorney

24 [File Endorsement Omitted].

25 IN THE UNITED STATES DISTRICT COURT

[Title Omitted]

ADDITIONAL AND SUPPLEMENTAL MOTION TO DISMISS INDICTMENT FILED BY LEAVE OF COURT —filed March 8, 1956

Now comes the defendant, GEORGE I. WITKOVICH, by Pearl M. Hart, his attorney, and in addition to the reasons heretofore given to the court for his motion to dismiss the indictment, all of which reasons are again urged herein, the defendant respectfully moves the court to dismiss the indictment herein for the following reasons:

1. The indictment does not charge a crime under the statute in question, or any other statute, because the questions it is alleged the defendant wilfully failed to answer have no bearing on, or relevancy to the statute, and have no relevancy to the defendant's availability for deportation.

2. The questions asked relate to constitutionally protected rights of peaceful assembly, association, freedom of speech and press, and none of the questions have any bearing upon defendant's availability for deportation.

26 3. The questions have no relationship to any rights which the attorney general lawfully has under the statute, are unreasonable and an abuse of power by the attorney general, and are contrary to the first, fifth, sixth, ninth, and tenth amendments to the Constitution.

4. Section 1252(d) Title 8 U.S.C. establishes no policy or rule or principle to limit or guide the attorney general in requiring the defendant to answer questions put to him by the attorney general; the section is therefore subject to grave abuse, and the defendant has no way of knowing in advance of prosecution for alleged crime what rights are given the attorney general under the section in question, nor what questions it would be appropriate for the attorney general to ask or for the defendant to answer.

Following are the questions which the indictment alleges the defendant failed to answer:

(a) Do you subscribe to the Daily Worker?

(b) M. Witkovich, can you read in any other language other than Slovene and English?

(c) Since the order of supervision was entered on March 4, 1954, have you at any time visited the office of the Narodny Glasnik, 1413 W. 18th St., Chicago, Illinois?

(d) Since the order of supervision was entered on March 4, 1954, Mr. Witkovich, have you ever visited the offices of the Bohemian publication "Nova Dova" or the Slovakian publication "Ludovy Noviny", 1510 West 18th St., Chicago, Illinois?

(e) Do you know the editor of the Narodni Glasnik?

(f) Do you know Leo Fisher?

(g) Do you know Anton Minerich?

27 (h) Do you know Nick Rajkovich?

(i) Do you know Arsenio Bartl?

(j) Do you know John Zuskar?

(k) Do you know Calvin Brook?

(l) Since the order of deportation was entered in your case on June 25, 1953, have you attended any meeting of the Communist Party of the U.S.A.?

(m) Since the order of supervision was entered on March 4, 1954, have you attended any meeting of any organization other than the singing club?

(n) Have you addressed any lodges of the Slovene National Benefit Society requesting their aid in your case, since the order of deportation was entered June 25, 1953?

(o) Have you distributed petitions or leaflets published by the Slovene National Benefit Society seeking aid for you, in your behalf, in your deportation case since the order of deportation was entered June 25, 1953?

(p) Since the order of supervision have you attended any meetings or lectures at the Peoples Auditorium, 2457 W. Chicago Ave., Chicago, Illinois?

(q) Since the order of supervision was entered against you have you attended any meetings or socials at the Chopin Cultural Center, 1547 North Leavitt St., Chicago?

(r) Have you attended any movies since your order of supervision was entered at the Cinema Annex, 3210 W. Madison St., Chicago?

(s) Are you acquainted with an individual named Irving Franklin?

(t) Are you now a member of the Communist Party of the United States?

(u) Are you now or have you ever been a member of the Slovene American National Council?

(v) Are you now or have you ever been a member of the United Committee of South Slavic Americans?

28 It is obvious that none of these questions has any relevancy to the defendant's availability for deportation.

For further reasons to dismiss the indictment, the defendant asks the indulgence of the court to again call attention to the following objections heretofore made to the indictment:

(a) No order of deportation is set out in the indictment;

(b) Nothing is alleged as to the authority by which said order of deportation was issued;

(c) It is not alleged that the defendant had notice of said order of deportation;

(d) Nor is it alleged under what sections of the Nationality Act of 1952 the defendant was found deportable.

(e) Because of the absence of these vital elements in the indictment the indictment is vague and uncertain. It contains no allegation which can be identified with any particular order of deportation which the government may introduce in evidence, and the defendant is therefore not advised of what he is to meet in his defense.

(f) Said indictment is violative of due process in that it deprives the defendant of his right to a jury trial in that it delegates to an administrative body the determination of the issue of deportation, which is a vital element in the instant criminal proceeding.

(g) Criminal consequences attached to a deportation order render the law as applied to the defendant, a bill of attainder and ex post facto law in violation of Article I, section 9.

29 The defendant reiterates and incorporates herein reasons 1 to 30 inclusive, of his motion to dismiss the indictment heretofore filed herein.

WHEREFORE, the defendant respectfully moves the court to dismiss the indictment herein for the reasons heretofore asserted.

Respectfully submitted,

GEORGE I. WITKOVICH
Defendant
By PEARL M. HART
His Attorney

PEARL M. HART
Attorney for Defendant
30 N. La Salle Street
Chicago 2, Illinois
STate 2-3213

30 [File Endorsement Omitted].

31 IN THE UNITED STATES DISTRICT COURT

No. 55 CR 607

UNITED STATES OF AMERICA

vs.

GEORGE I. WITKOVICH,
also known as
JURI ISADOR WOTKOVICH

MEMORANDUM—May 10, 1956

This is an indictment under Title 8 U.S.C. Sec. 1252 (d), which reads:

"(d) Any alien, against whom a final order of deportation as defined in subsection (c) of this section, heretofore or hereafter issued has been outstanding for more than six months, shall, pending eventual deportation, be subject to supervision under regulations prescribed by the Attorney General. Such regulations shall include provisions which will require any alien subject to supervision (1) to appear from time to time before an immigration officer for identification; (2) to submit, if necessary, to medical and psychiatric examination at the expense of the United States; (3) *to give informa-*

tion under oath as to his nationality, circumstances, habits, associations, and activities, and *such other information, whether or not related to the foregoing, as the Attorney General may deem fit and proper;* and (4) to conform to such reasonable written restrictions on his conduct or activities as are prescribed by the Attorney General in his case. Any alien who shall wilfully fail to comply with such regulations, or *wilfully fail to* appear or to *give information* or submit to medical or psychiatric examination if required, or knowingly give false information in relation to the requirements of such regulations, or knowingly violate a reasonable restriction imposed upon his conduct or activity, shall upon conviction be *guilty of a felony,* and shall be fined not more than $1,000 or shall be imprisoned not more than one year, or both." (Underscoring added)

32 A motion to dismiss the indictment, attacking the constitutionality of the statute, is now before the court. The charge is that defendant violated clause (3), underlined above, in that he wilfully failed to answer certain questions which are set forth in the indictment. There is no allegation that he refused to appear, to submit to a medical or psychiatric examination, or to submit to reasonable restrictions on his conduct; these requirements are not, therefore, directly involved, although incidental consideration of them is necessary.

The parties agree that this Act is an exercise by Congress of the power of the United States as a sovereign state to deal with aliens within its territory (*Carlson v. Landon,* 342 U.S. 524 (1952); *United States v. Tandaric,* 152 F. 2d 3, 5 (C.A. 7, 1946; cert. den. 327 U.S. 786)). To be upheld, it must constitute a valid delegation of that power to the Attorney General, in terms definite enough to form a standard of guidance for his conduct (*Winters v. New York,* 333 U.S. 507, 515 (1947); *Lichter v. United States,* 334 U.S. 742, 786 (1948)). Whether it does or not can be determined only by an examination of the section in its context: Title 8 U.S.C.A. 1251, *et. seq.,* and the cases which have interpreted

those sections. Section 1251 provides that any alien in the United States shall be deported upon the order of the Attorney General for causes there set forth; section 1252(b) prescribes the procedure for the entry of such an
33 order. Pending determination of deportability, an alien may in the discretion of the Attorney General be continued in custody, or released on bond or conditional parole (Section 1252(a)). The Attorney General's discretion under this section is not unlimited, but may be reviewed by the courts to determine whether he acted reasonably (*U.S. v. Shaughnessy*, 212 F. 2d 128 (C.A. 2, 1954); *U.S. v. Holton*, 205 F.2d 228, 230 (C.A. 7, 1953); *Ocon v. Landon*, 218 F. 2d 320, 324 (C.A. 9, 1954)). After the entry of a final deportation order, the Attorney General is given six months within which to "effect the alien's departure," during which the alien may be detained or released on bond. (Sec. 1252(c)). The alien must be released from detention sooner than six months if it appears that there is no reasonable possibility of his being deported in the foreseeable future (*U.S. v. District Director of Immigration*, 117 F. Supp. 541 (S.D. N.Y., 1953); *U.S. ex rel Cefalu v. Shaughnessy*, 117 F. Supp. 473 (S.D. N.Y., 1954)). Although this subsection provides that after the six-months period, if deportation has not been effected, the alien "shall become subject to such further supervision and detention pending eventual deportation as is authorized in this section," it has been held that "and detention" is surplusage, the period of detention must terminate after six months, and the alien thereafter be subject only to such detention
34 as may result from a violation of the supervision provisions of subsection (d) (3). (*U.S. ex rel Youw v. Shaughnessy*, 102 F. Supp. 799, 801, (S.D. N.Y., 1952); *U.S. ex rel Blankenstein*, 177 F. Supp. 699 (S.D. N.Y., 1933)). The last-named section is the one here considered, and has been quoted in full; the regulations are in substantially the language of the statute. Subsection (2) provides that wilfull refusal or failure to depart after an immigration order is final shall be a felony; Section 1253 relates to the countries to which the Attorney General shall deport the aliens.

It is apparent from this summary of the deportation procedure that after the entry of a final order of deportation,

the sole remaining power and duty of the Attorney General is to make sure that the alien departs from the country. It follows that the powers of supervision given him are intended as an aid in enforcing this power by making certain that the alien will be available for deportation when and if the time comes that this is possible. Clauses (1), (2), and (4) of the same subsection are reasonably calculated to fulfill this purpose. Clause (1), requiring the alien to submit himself for identification, is clearly helpful to that end; the requirement of physical examinations might be necessary to deportation to a particular country; and in (4), "to conform to such reasonable written restrictions on his conduct or activities as are prescribed by the Attorney General in his case," the word "reasonable" may be read as "those restrictions which tend to guarantee his availability for deportation." The same may be said of clause (3), of immediate concern here: "to give information * * * as to his nationality, circumstances, habits, associations, and activities, and such other information, whether or not related to the foregoing, as the Attorney General may deem fit and proper." This must be read to mean such information as is necessary to enable the Attorney General to be certain that the alien is holding himself in readiness to answer the call to be deported when it comes.

The Government urges that the Attorney General may, under this section, question the alien to determine not only his availability for deportation, but also to satisfy himself that the activities for which the alien was ordered deported are not continuing. There is no warrant for such an interpretation, since the Attorney General is powerless to take any further action even if they are continuing. A deportation order is not a magic incantation, but a finding that the alien is, for one reason or another, an undesirable resident of this country. Further, it is an order entered in a civil proceeding, in which proof is by "clear and convincing" evidence, rather than beyond a reasonable doubt. *U.S. ex rel Vajtauer v. Com'r, 273 U.S. 103*, in which counsel need not be appointed (*U.S. v. Vander Jagt*, 133 F. Supp. 676 (W.D. Mich., 1955)), and hearsay evidence may be admitted (*Navarette-Navarette v. Landon*, 223 F. 2d 234 (C.A. 9, 1955)).

There is accordingly no justification for allowing a depor-

tation order to accomplish more than its intended purpose. It establishes, in a hearing adequate for this end, that the alien shall depart this country and nothing more. The Attorney General has been given power to supervise the alien to make sure he is available for deportation, and no further power. If, after the entry of the order, the alien engages in activity punishable under the Criminal Code, the Attorney General is at liberty to bring him before a Grand Jury and move for an indictment in the usual way. If he is not engaging in such activity, and if it is physically impossible to deport him, and if increasing numbers of aliens in this situation has created a serious problem, then Congress may solve it by giving some official definite and measurable power to deal with the dilemma. So far it has not done so, except to the extent that it has given the Attorney General the powers of supervision here considered.

This discussion has dealt with most of the objections urged by the defendant. He also urges that the statute creates a crime by legislative fiat, leaving the court nothing to do but to pronounce sentence in a summary proceed-
37 ing (*Wong Wing v. United States*, 163 U.S. 228, 236 (1896)), and that procedural due process has been violated. That is not the case when the statute is correctly interpreted. The court will determine the relevancy of the questions by a definite standard: do they assist the Attorney General in making certain that the alien will be available for deportation?

Defendant also contends that the statute here considered violates the First Amendment guarantee of freedom of speech of which freedom of silence has been assumed to be a part (*United States v. O'Connor*, 135 F. Supp. 590 (D.C., 1951), and cases cited page 596). However, speech may be compelled by Congress, and silence punished, when special circumstances warrant restrictions on traditional freedoms. Thus Title 2 U.S.C. Sec. 192 making it an offense punishable by fine or imprisonment to fail to answer proper questions asked by Congressional committees has been upheld (*In re Chapman*, 166 U.S. 661, 672 (1896); *United States v. Bryan*, 339 U.S. 323, 327 (1949)). Under this statute, however, questions must be relevant to the Congressional power to legislate (*Quinn v. United States*, 349 U.S. 155, 162 (1955); just

as in the instant case they must relate to the valid
38 power of the Attorney General).

The motion to dismiss the indictment is overruled. February 15, 1956.

After the announcement of the foregoing opinion, new motions and briefs were filed by both parties.

Defendant filed a "Supplemental Motion to Dismiss Indictment." His argument in support of this motion in part re-iterates objections previously considered by the court. He contends that the indictment is vague and uncertain in that it fails to set forth the order of deportation, the authority by which, or the sections under which it was made, or that the defendant had notice of it. These objections must be overruled. The indictment is in the language of the statute and sufficiently notifies the defendant of the charge which he must meet. Several other objections urged were dealt with in the original memorandum, but have been re-considered, and are overruled. The Court adheres to its original opinion that the statute, as construed, is not unconstitutional.

The government's brief in answer to this Supplemental Motion to Dismiss is devoted to the presentation of additional material in support of its original contention that the statute gives the Attorney General power to question a deportable alien about matters other than his availability
for deportation. This additional information has
39 been carefully considered and found not to be convincing. The theme of the government's argument appears to be that to let deportable aliens roam the country unsupervised would create a very dangerous situation. The Court is of the same opinion. As the previous memorandum indicated, Congress quite correctly gave the Attorney General power to make certain of the alien's whereabouts at all times. To this end, under the statute here considered, the Attorney General could properly ask, and enforce his right to receive answers to, questions as to the alien's place of residence, whether he owns his home or rents, where he works and how long he has worked there, whether he is married and lives with his wife, and an endless list of inquiries along the same line. This power is quite sufficient

to ensure that the alien will not be without supervision. To hold that the statute intended to give an official the unlimited right to subject a man to criminal penalties for failure to answer absolutely any question the official may decide to ask would raise very serious constitutional questions. The Court accordingly reiterates that the power given to the Attorney General by the statute in question is to enforce his right to question a deportable alien to make certain that the latter is holding himself available for deportation.

The defendant's motion asks that the Court now examine the questions set forth in the indictment, and dismiss
40 the indictment for the reason that it is apparent that none of them is related to his availability for deportation. Although there is no authority under this particular section, such a procedure is dictated by analogous situations in other fields. Thus it is the duty of the judge to rule on whether or not the privilege against self-incrimination has been properly claimed, and "To sustain the privilege, it need only be evident from the implications of the question, the setting in which it is asked, that responsive answer to the question or an explanation of why it cannot be answered might be dangerous because injurious disclosure could result" (*Hoffman v. United States*, 341 U.S. 479, 489 (1950); quoted, *Emspak v. United States*, 349 U.S. 190, 199 (1954)). And in a prosecution for perjury, it is clear that the materiality of the questions asked is a question of law for the court (*Sinclair v. United States*, 279 U.S. 263, 298 (1929)); *United States v. Orman*, 207 F. 2d 148, 155 (1953), and that materiality "should appear from the face of the indictment" (*Markham v. United States*, 160 U.S. 319, 325 (1895)). Where the questions are not relevant on their face, but there is any probability that they could be shown to be relevant, it is proper to give the government an opportunity to make some sort of showing on the question (*Bowers v. United States*, 202 F. 2d 447, 449 (C.A., D.C., 1953); *United States v. Orman, supra*). However, where it appears from the indictment that the questions alleged are not even
41 probably material, the indictment should be dismissed. (*United States v. Garvett*, 35 F. Supp. 644, 646 (E.D. Mich., 1940); *United States v. Seymour*, 50 F. 2d 930, 940 (D. Neb., 1931); *United States v. Cameron*, 282 Fed. 684, 692 (D. Ariz., 1922)). Where it is perfectly apparent to

the trial judge from the face of the indictment that the questions set forth are irrelevant, the defendant will not be exposed to what would be a "mere ceremony of trial" (*United States v. Laut*, 17 F.R.D. 31, 36 (S.D., N.Y., 1955)).

In the present case, the government apparently agrees that a ruling on the questions now is the proper procedure in this case. In its brief in opposition to the motion to dismiss, it has not urged that the questions were relevant, but has confined itself to urging the court to reverse its previous position. Further, in a "Motion for Clarification" of the Court's previous memorandum, it has prayed "that the Court rule on the legality of the questions asked."

The law in analogous situations, reason, and the explicit request of both the government and defendant, thus dictate that I examine the questions set forth in the indictment. This examination is for the purpose of determining whether they are (a) clearly relevant, (b) possibly relevant, or (c) clearly irrelevant, to the matter of assisting the
42 Attorney General to make certain that the alien is available for deportation.

Of the twenty-two questions on which the indictment is based, many are so far afield as to require no discussion, since it is apparent at a glance that they are in no way relevant to this purpose. These are as follows:

> "Can you read in any other language than Slovene and English?"
>
> "Have you attended any meeting of any organization other than the singing club?"
>
> "Have you addressed any lodges of the Slovene National Benefit Society seeking aid for you, in your behalf, in your deportation case * * *?"
>
> "Have you distributed petitions or leaflets published by the (above) Society seeking aid for you, in your behalf * * *?"
>
> "Since the order of supervision have you attended any meetings or lectures at the People's Auditorium * * *?"
>
> "* * * Have you attended any meetings or socials at the Chopin Cultural Center * * *?"
>
> "Have you attended any movies * * * at the Cinema Annex?"

"Are you now or have you ever been a member of the Slovene American National Council?"

"Are you now or have you ever been a member of the United Committee of the South Slavic Americans?"

There is no allegation which would shed any light on how these activities would in any way affect the probability of the alien's presenting himself to immigration officials when required to do so. The questions by themselves are
43 completely meaningless in this context.

The same may be said of ten other questions, eight of which are "Do you know John Doe?", and two "Have you visited the office of John Doe?" "We seriously doubt whether the 'Do-you-know-a-certain-person' question, without more, can ever be said to be pertinent for the purpose of a criminal prosecution under Sec. 192" (*Bowers v. United States, supra,* at page 447; see also *United States v. Auippa,* 102 F. Supp. 609, 613 (N.D., Ohio, 1950)).

The first question in the indictment is "Do you subscribe to the Daily Worker?" Quite aside from its obvious irrelevancy to availability for deportation, to subject a man to criminal penalties for failure to answer a question as to what he reads would be an apparent infringement of rights protected by the First Amendment.

The remaining two questions are "Have you attended any meetings of the Communist Party of the U.S.A.?", and "Are you now a member of the Communist Party of the U.S.A.?" It is apparent that an affirmative answer to this question would not indicate anything about whether or not the defendant was holding himself in readiness for deportation. Directly in point are the many cases which have held that whether or not a person is a member of the Communist Party, by itself, has no relationship to his fitness to be admitted to bail. The leading case is *Stack v. Boyle,*
44 342 U.S. 1, 5 (1951), in which the Court considered a motion for reduction of bail by persons indicted under the Smith Act. The only evidence offered by the Government was a showing that four persons previously convicted under that Act had forfeited bail. The Court found such a showing insufficient, remarking that "the fixing of bail for any individual defendent must be based

upon *standards relevant* to the purpose of *assuring the presence of that defendant.*" (Italics added).

A similar holding in *Christoffel v. United States,* 190 F. 2d 560, 567 (C.A., D.C., 1952) is explained in the following quotation:

> "The Government urges that the fact that Christoffel is a Communist and is active in party affairs renders unlikely his appearance when required to appear. • • • Moreover, even if it be assumed that (he) is a Communist and is actively engaged in Communist party affairs, this, without more, is not a proper ground for denial of bail. • • • In the instant case the present primary issue is whether Christoffel will, under the conditions of bail • • • make appearance before the court when required to do so."

The opinion then quotes from another bail case which reached the same result on the same reasoning, *Williamson v. United States,* 184 F. 2d 280, 284 (C.A. 2, 1950):

> "But the right of every American to equal treatment before the law is wrapped up in the same constitutional bundle with those of these Communists. If in anger or disgust with these defendants we throw out the 45-46 bundle, we also cast aside protection for the liberties of more worthy critics who may be in opposition to the government of some future day."

Another authority to the same effect is *United States* ex rel *Pirinsky v. Shaughnessy,* 184 F. 2d 280, 284 (C.A. 2, 1950).

Accordingly, while the defendant's contention that the Act is unconstitutional is overruled, the indictment will be dismissed for the reason that none of the questions there set forth is relevant to defendant's availability to deportation.

PHILIP L. SULLIVAN,
Judge

May 10th, 1956

47 IN THE UNITED STATES DISTRICT COURT

No. 55 CR 607

UNITED STATES OF AMERICA

vs.

GEORGE I. WITKOVICH,
also known as
JURI ISADOR WOTKOVICH

ORDER DISMISSING INDICTMENT—May 10, 1956

This cause coming on for ruling on defendant's motion to dismiss the indictment comes the United States by the United States Attorney comes also the defendant in person and by his counsel and the Court being fully advised and having filed a memorandum opinion it is

ORDERED that the motion to dismiss be and the same hereby is sustained and that the indictment be and the same hereby is dismissed.

48 [File Endorsement Omitted]

49 IN THE UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed June 8, 1956

I. Notice is hereby given that the United States hereby appeals to the Supreme Court of the United States from the order entered May 10, 1956, dismissing the indictment which charged a violation of Section 242(d) of the Immigration and Nationality Act of 1952.

This appeal is taken pursuant to 18 U.S.C. 3731.

II. The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. Transcript of docket entries
2. Indictment

3. Motion to dismiss the indictment filed December 12, 1955
50 4. Opinion and order of the district court of February 15, 1956
5. Motion for clarification of opinion
6. Additional supplemental motion to dismiss filed March 8, 1956
7. Opinion of the district court dated May 10, 1956
8. Order dismissing the indictment
9. Notice of Appeal and proof of service.

III. The following question is presented by this appeal.

Under Section 242(d) of the Immigration and Nationality Act of 1952, an alien against whom a final order of deportation has been issued but whose deportation has not been effectuated within six months of such final order is, pending eventual deportation, subject to supervision under regulations prescribed by the Attorney General which must include, *inter alia*, a condition requiring the alien "to give information under oath as to his nationality, circumstances, habits, associations, and activities, and such other information, whether or not related to the foregoing, as the Attorney General may deem fit and proper." Failure to comply with the conditions of supervision constitutes a crime.

The question presented is whether an alien ordered deported for past membership in the Communist Party, who is subject to such an order of supervision, may be questioned concerning present membership in and activities on behalf of the Communist Party and other organizations,
51-52 and associations with particular individuals, so that willful failure to answer such questions constitutes a crime under Section 242(d), or whether the questioning authorized by the statute must relate only to the alien's availability for deportation.

R. TIEKEN,
United States Attorney
Northern District of Illinois
WILLIAM T. HART,
Assistant United States Attorney
Northern District of Illinois

June 1956.

53 [File Endorsement Omitted]

54 IN THE UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO RECORD—Filed July 18, 1956

IT IS HEREBY STIPULATED by and between the United States of America and George I. Witkovich, also known as Juri Isador Witkovich, that there shall be included as a part of the record on appeal to the United States Supreme Court the following documents, true copies of which are attached hereto:

(1) Order of supervision served on the defendant on March 4, 1954, attached hereto:

(2) Sworn testimony given by the defendant herein on September 14, 1954, and attached hereto.

UNITED STATES OF AMERICA
By R TIEKEN,
United States Attorney
Northern District of Illinois
GEORGE I. WITKOVICH,
also known as
JURI ISADOR WITKOVICH
By PEARL M. HART,
Attorney

55 UNITED STATES DEPARTMENT OF JUSTICE

IMMIGRATION AND NATURALIZATION SERVICE

CHICAGO, ILLINOIS

District File No. E-10-685

A. R. No. A-5-509-411

Date: March 4, 1954

ORDER OF SUPERVISION

In the case of GEORGE WITKOVICH, whose deportation in accordance with law was ordered on June 25, 1953.

Section 242(d) of the Immigration and Nationality Act provides:

"Any alien, against whom a final order of deportation as defined in subsection (c) heretofore or hereafter

issued has been outstanding for more than six months, shall, pending eventual deportation, be subject to supervision under regulations prescribed by the Attorney General. Such regulations shall include provisions which will require any alien subject to supervision (1) to appear from time to time before an immigration officer for identification; (2) to submit, if necessary, to medical and psychiatric examination at the expense of the United States; (3) to give information under oath as to his nationality, circumstances, habits, associations, and activities, and such other information, whether or not related to the foregoing, as the Attorney General may deem fit and proper; and (4) to conform to such reasonable written restrictions on his conduct or activities as are prescribed by the Attorney General in his case. Any alien who shall willfully fail to comply with such regulations, or willfully fail to appear or to give information or submit to medical or psychiatric examination if required, or knowingly give false information in relation to the requirements of such regulations, or knowingly violate a reasonable restriction imposed upon his conduct or activity, shall upon conviction be guilty of a felony, and shall be fined not more than $1,000 or shall be imprisoned not more than 1 year, or both."

THEREFORE, it is hereby ordered that such alien shall be placed under supervision and permitted to be and to remain at large upon the following terms:

(1) That said alien shall produce himself, at time and place designated, for deportation pursuant to the order of deportation.

(2) That said alien shall upon request produce himself at a time and place designated for the purpose of submitting to medical and psychiatric examination and/or to furnish such information as may be deemed fit and proper.

(3-a) That said alien shall notify the Officer in Charge of the Immigration and Naturalization Service at the address shown in (4) hereof of any change in residence or employ-

ment, within the immigration district, within 48 hours after change is made.

(3-b) That said alien shall apply to the Officer in Charge of the Immigration and Naturalization Service at the address shown in (4) for permission to change place of residence from one immigration district to another, at least 48 hours prior to such change.

(4) That said alien shall report in (PERSON) the 7th day of each month at (a.m.) (p.m.) to the Officer in
56 Charge of the Immigration and Naturalization Service at Room 905 New Post Office Bldg., Chicago, Illinois.

The written report shall contain (a) the name, (b) alien registration number, (c) date, (d) current address, (e) place of employment, (f)

(5) That said alien shall report to
in person

(6) That said alien shall terminate and remain disassociated from membership in, if any, support or other activity if any, in or in furtherance of the doctrines and policies of, the Communist Party of the United States, the Communist Political Association, the Communist Party of any state, or of any foreign state or of any political or geographical subdivision of any state, any section, subsidiary, branch, affiliate or subdivision of any such group or organization.

(7) That said alien shall refrain from associating with any person knowing or having reasonable ground to believe that such person is a member of or affiliated with or is engaged in any promotion of any of the activities mentioned in subparagraph above,*

(8) That said alien shall not violate Section 2385 of the "Smith" Act of June 25, 1948 (Section 2385 of Title 18, U. S. Code) and Section 4 of the Internal Security Act of September 23, 1950 (Section 783 of Title 50, U. S. Code).

(9) That said alien shall not travel outside the State of Illinois nor 50 miles outside the City Limits of Chicago, Illinois.

* Par 7 Cont.—provided that the term "associating" as used in this subparagraph shall not be construed to include members of such alien's family or professional legal counsel if such associations are not used in furtherance of the doc-

trines, policies, or activities of any of the organizations or activities mentioned in preceding subparagraph.

JOHN P. SWANSON, *Chief*
Border Patrol and
Deportation Branch
Chicago District

Chicago, Illinois

I, GEORGE WITKOVICH, hereby acknowledge that I have read and understand the terms of this order, a copy of which I have received. I further understand that failure to comply with the terms of this order or with any of the conditions of 242(d) of the Immigration and Nationality Act, will subject me to prosecution.

Z. J. REAM
Parole Officer
Rm 905 New Post Office Bldg.
Chicago, Ill.

(Alien's signature)
2153 South Lawndale
Chicago, Illinois

I, , hereby acknowledge that I understand the terms set forth above and hereby agree to furnish a written report each month to the Officer in Charge concerning the alien's name, registration number, current address, place of employment, associates, and organizational activities, and that I will immediately report any failure on the part of the alien to comply with the terms of the order or information coming to my attention which might indicate that the alien intends to abscond or otherwise violate this order.

Note: The subject refused to sign acknowledgement of this order therefore, it was read to him in the presence of the undersigned, this 4th day of March 1954.

——— ———,
Investigator
R. A. DENNER,
Patrol Inspector

57 UNITED STATES DEPARTMENT OF JUSTICE

IMMIGRATION AND NATURALIZATION SERVICE
CHICAGO, ILLINOIS

RECORD OF SWORN STATEMENT

In re: GEORGE WITKOVICH File No. E-10685

Present

Respondent ..... GEORGE WITKOVICH
Attorney for Respondent ..... PEARL M. HART
Investigator ..... LOUIS J. OSTERKORN
Stenographer ..... OLGA G. SANDBERG

Place: Room 926,
New Post Office Bldg.,
Canal & Van Buren Sts.,
Chicago, Illinois

Date: September 14, 1954

Language: English
Interpreter: None

Investigator OSTERKORN to respondent:

Q. Mr. Witkovich, you are informed that I am an investigator in the employ of the United States Immigration and Naturalization Service and am authorized by law to administer oaths in connection with the enforcement and administration of the immigration and nationality laws and regulations, I wish to question you today in accordance with Sections 242(d) and 242(e) of the Immigration and Nationality Act of 1952. Section 242(d) requires, among other things, that any alien against whom a final order of deportation has been outstanding more than six months shall, pending eventual deportation, be subject to supervision under regulations prescribed by the Attorney General. Among other regulations the alien is required to give under oath information as to his nationality, circumstances, habits, associates, activities and such other information, whether or not related to the foregoing, as the Attorney General may deem fit and proper. Section 242(d) further provides that if the alien coming under this class fails to give such informa-

tion or gives false information with relation to the requirements of such regulations, then the alien shall, upon conviction, be guilty of a felony and shall be fined not more than $1,000 or shall be imprisoned not more than one year, or both. Section 242(e) declares that any alien against whom an order of deportation has been entered who wilfully fails or refuses to depart from the United States within six months from the date of the final order of deportation under administrative processes or who shall wilfully fail or refuse to make timely application in good faith for travel or other documents necessary to his departure shall, upon conviction, be guilty of a felony and shall be imprisoned for not more than ten years. Do you understand?

A. Yes.

58 Q. You are further warned, Mr. Witkovich, that any information you furnish here in this proceeding may be used against you in any criminal or civil proceeding the Government may wish to institute. Do you understand?

A. Yes.

Q. Further, at this proceeding you may be represented by counsel if you so wish. Do you wish to be represented by counsel?

A. Yes.

Investigator OSTERKORN to counsel:

Q. Will counsel please state her name, business address and telephone number?

A. Pearl M. Hart, 30 North LaSalle Street, Chicago. State 2-3213.

Investigator's note: Miss Pearl Hart, according to the records of this office, has entered her appearance as respondent's attorney and has been admitted to practice before the Board of Immigration Appeals and the Immigration and Naturalization Service.

Investigator OSTERKORN to counsel:

Q. Are you ready to proceed, Miss Hart?

A. Yes I am.

Investigator OSTERKORN to respondent:

Q. Will you please stand and be sworn? (Complies.) Do you solemnly swear that the testimony you are about to give

will be the truth, the whole truth and nothing but the truth, so help you God?

A. I do.

Q. What is your true and correct name?

A. George I. Witkovich.

Q. What does the "I" stand for?

A. Isadore.

Q. What was your name at birth?

A. Juri Isador Witkovich.

Q. Have you been known by any other names?

A. No.

Q. What is your present address?

A. 2153 South Lawndale Ave., Chicago. Telephone Crawford 7-0197.

Q. How long have you resided at that address?

A. It will be two years in February.

59 Q. With whom do you reside there?

A. My family. My wife Barbara and five children —George R., Carl D., Barbara R., Walter D. and Ralph E. Witkovich.

Q. Are all the children citizens of the United States?

A. Yes, they were all born here.

Q. Is your wife a citizen of the United States?

A. Yes.

Q. What is your nationality?

A. I don't know. That is a question I could not answer. I was born in the old Austrian-Hungarian Empire, and Yugoslavia came after I left.

Q. The country where you were born now is Yugoslavia?

A. Yes.

Q. Do you have your alien registration card with you?

A. You have it here.

Q. On March 4, 1954 an order of supervision was entered in your case and you were placed on supervised parole. The parole agreement, which you refused to sign, was read to you by Parole Officer Zeno J. Ream on March 4, 1954 and was witnessed by D. J. Shipma, investigator, and R. A. Denner, patrol inspector. Is that correct?

By Counsel HART:

A. The answer to that is "I don't know who witnessed it but it was witnessed by two persons. And the order of supervision was read to me."

Investigator OSTERKORN to respondent:

Q. Were you furnished with a copy of the order of supervision, form I-220-B, the original of which I now show you and your counsel?

A. Yes.

Investigator's note: Order of Supervision, form I-220-B, dated March 4, 1954, presented to counsel and respondent for inspection.

Q. Have you been reporting to this office regularly between the 1st and 10th of each month?

A. Yes, sir.

Q. When did you report in person last time?

A. Last Wednesday.

Q. Where are you employed?

A. Prosveta. 2657 South Lawndale Avenue, Chi-
60 cago.

Q. What is the telephone number there?

A. I don't know. I never use it.

Q. What is the "Prosveta"?

A. That is a newspaper.

Q. Is it a daily or weekly?

A. A daily—four dailies and a weekly. It is the organ of a fraternal organization.

Q. In what language is the "Prosveta" published?

A. Slovenian and English.

Q. What organization publishes this paper?

A. The Slovene National Benefit Society.

Q. Is that society known in Slovene as the "Slovenska Narodna Podporna Jednota"?

A. Yes.

Q. When did you start to work for them?

A. May 2, 1952.

Q. Have you a Social Security number?

A. Yes, but I do not know the number.

Q. What is your occupation there?

A. Proof reader.

Q. Do you do any translating work too?

A. Sometimes, in a pinch.

Q. Do you write any articles for "Prosveta"?

A. No.

Q. Have you ever written articles for it?
A. No.
Q. What is your salary there?
A. $83.00 a week.
Q. Who pay it?
A. The "Prosveta".
Q. How many hours do you work there, and days?
A. From 8-4 every day except Saturday and Sunday.
61 Q. Who is the editor there?
A. Frank Zaitz.
Q. Who are the associate editors?
A. They are not considered associate editors. They are just assistant editors.
Q. How many persons are on the personnel of the "Prosveta"?

By Counsel:

A. Mr. Osterkorn, I think the only thing in which you are interested is his place of employment, how much time he works there. I don't think he is in a position to answer as to the personnel. He is just a proof reader. He is accounting for himself and not anybody else.

Investigator Osterkorn to respondent:

Q. What is the policy of that paper?

By Counsel:

A. That is objected to as having no bearing upon this even if he knows, and I shall advise him not to answer anything except with reference to himself.

Investigator Osterkorn to counsel:

Q. I will have to overrule your objection.
A. I don't care. He still won't answer.

Investigator Osterkorn to respondent:

Q. I shall ask you again, Mr. Witkovich. Is it an independent paper?

By Counsel:

A. I object to that.

By Investigator OSTERKORN:

Q. Objection overruled.
Counsel to respondent: Don't answer.

Investigator OSTERKORN to respondent:

Q. Does the "Prosveta" have another organization besides the Slovenian National Benefit Society that handles their advertising?

62 By COUNSEL:

A. That is objected to as not being relevant to the question, or issue.

Investigator OSTERKORN to respondent:

Q. Have you ever heard of a "Prosveta Advertising Agency"?

By COUNSEL:
A. That is objected to as not being relevant to the issue.
By Investigator: Objection overruled.

Investigator OSTERKORN to respondent:

Q. I again direct you to answer that question.

By COUNSEL:

A. He does not answer.

Investigator OSTERKORN to respondent:

Q. Will you answer instead of counsel?
A. I refuse to answer on advice of counsel.

By COUNSEL:

A. And for the further reason that the question is irrelevant to the issue.

Investigator OSTERKORN to respondent:

Q. Do you have any money in the bank, Mr. Witkovich?
A. We have a lot of debts and a little account here and there to pay the current debts.

Q. What is the total amount of savings you have in the bank? Approximately?

A. I couldn't tell you. I pay no attention to it. My wife handles the finances.

Q. Do you own any stock?

A. No, sir.

Q. Do you own your own home?

A. Yes, but it is mortgaged.

Q. How much is the mortgage?

A. It is over $9,000.

63 Q. Do you have any other income besides your income from the "Prosveta"?

A. No.

Q. Who is dependent upon you for your support?

A. My wife and five children; although one works but he doesn't contribute anything to the support of the family. One is in the army and we have to send him money occasionally, and the other three are in school.

Q. Since March 4, 1954, the date that the order of supervision was entered in your case, have you left the State of Illinois?

A. No, sir.

Q. Have you left the City of Chicago?

A. No, sir.

Q. Since June 25, 1953, the date that an order of deportation was entered in your case, have you been arrested for any violation of law?

A. No, sir.

Q. When you are not working, Mr. Witkovich, how do you pass your spare time?

A. I have a lot of work at home. Repair this and repair that. Always more work than time.

Q. Do you read?

A. Oh, yes.

Q. What do you read?

By COUNSEL:

A. That is objected to.

Investigator OSTERKORN to respondent:

Q. In your spare time do you read the Chicago Tribune?

By COUNSEL:

A. I object to any queries as to what the man reads for the reason that whatever he reads is protected by the First Amendment to the Constitution of the United States, and neither this inquiry nor any other department or individual has a right to inquire into what an individual resident in the United States reads. And that is applicable to whether it is the Chicago Tribune, any other newspaper or any book, publication, pamphlet or any other document that is circulated.

By Investigator: Objection overruled.

64 Investigator OSTERKORN to respondent:

Q. Do you wish to answer that question, Mr. Witkovich? Do you read the Chicago Tribune? Will you answer for yourself or do you remain mute?

By COUNSEL:

A. Mr. Witkovich will make this answer, that he is guided by his attorney in his behalf and when his attorney makes an objection Mr. Witkovich will not answer.

Investigator OSTERKORN to respondent:

Q. Do you subscribe to the Daily Worker?

By COUNSEL:

A. That is objected to for the same reason, and Mr. Witkovich will not answer.

By Investigator: Objection overruled.

Investigator OSTERKORN to respondent:

Q. Again I direct you, Mr. Witkovich, to answer the question "Do you subscribed to the Daily Worker."

By COUNSEL:

A. Mr. Witkovich has already answered through his counsel.

Investigator: I should like to have the respondent make the answer.

Counsel: I will make the answer, Mr. Osterkorn. I have already made my objection and Mr. Witkovich abides by my objection.

Investigator OSTERKORN to respondent:

Q. Mr. Witkovich, can yo . read in any other language other than Slovene and English?

By COUNSEL:

A. That is objected to for the same reason as given in objecting to whether or not he reads the Chicago Daily Tribune.

Investigator: Objection overruled.

Investigator OSTERKORN to respondent:

Q. Can you read Croatian?

65 COUNSEL:

A. That is objected to for the same reason.

Investigator: Objection overruled.

Investigator OSTERKORN to respondent:

Q. In your spare time, with whom do you associate?

A. I just explained previous to this. At home. No association outside of my cultural club—is singing on Tuesday night two hours.

Q. What is the name of that singing club?

A. Preseren.

Q. Is that a Slovene name?

A. Yes.

Q. What does that mean?

A. That is the name of a famous poet. He is the Walter Whitman in our language.

Q. Where does that club hold its singing festivals?

A. In different halls, twice a year.

Q. Do you have any other activities besides, i.e., at home and in the singing club?

A. No.

Q. Since the order of deportation was entered on March 4, 1954, have you at any time visited the office of the

"Narodny Glasnik", 1413 West 18th Street, Chicago, Illinois?

Counsel: What is that office?

Investigator: That is the "Narodny Glasnik," at 1413 West 18th Street.

COUNSEL:

A. The question is objected to on the ground that he has already testified that his activities consist wholly of his work at home with his family and of his rehearsing once a week with a singing society, and for the further reason that the Department has no right to inquire into where the individual respondent goes or whom he visits, in spite of the Section which the officer has read to the respondent.

Investigator: Objection overruled. I again direct Mr. Witkovich to answer the question.

66 COUNSEL:

A. The question has been answered through the objection of his counsel.

Investigator: I will appreciate the respondent answering it yes or no.

Counsel: Regardless of what Mr. Osterkorn would appreciate, and we would like very much to accommodate him, but as a matter of law we have to adhere to what we regard as the law.

Investigator OSTERKORN to respondent:

Q. Since the order of supervision was entered on March 4, 1954, Mr. Witkovich, have you ever visited the offices of the Bohemian publication "Nova Dova" or the Slovakian publication "Ludovy Noviny", 1510 West 18th Street, Chicago, Illinois.

COUNSEL:

A. The question is objected to on the same grounds as stated to the question relating to "Narodni Glasnik".

Investigator: Objection overruled.

Investigator OSTERKORN to respondent:

Q. I will direct Mr. Witkovich again to answer that question. Did you ever visit the offices at 1510 West 18th Street, the offices of the "Nova Dova"?

COUNSEL:

A. The question has been answered through the objection of his counsel.

Investigator OSTERKORN to respondent:

Q. I would like very much, Mr. Witkovich, if you would answer the question. Do you refuse to answer the question?

COUNSEL:

A. Sorry to insist but the purpose of Mr. Witkovich's having counsel here is for counsel to make answer under appropriate circumstances and therefore there is nothing more for Mr. Witkovich to say in response to this particular question.

Investigator OSTERKORN to respondent:

Q. Do you know the editor of the "Narodni Glasnik"?

67 COUNSEL:

A. Objected to as immaterial and not relevant to any issue.

Investigator: Objection overruled.

Investigator to respondent:

Q. Do you know Leo Fisher?
Counsel: Objected to.
Investigator: Objection overruled.

Investigator to respondent:

Q. Do you know Anton Minerich?
Counsel: Objected to for the same reason as stated before.
Investigator: Objection overruled.

Investigator to respondent:

Q. Do you know Nick Rajkovich?
Counsel: Objected to.
Investigator: Objection overruled.

Investigator to respondent:

Q. Do you know Arsenio Bartl?
Counsel: Objected to.
Investigator: Objection overruled.

Investigator to respondent:

Q. Do you know John Zuskar?
Counsel: Objected to.
Investigator: Objection overruled.

Investigator to respondent:

Q. Do you know Calvin Brook?

68 COUNSEL:

A. Objected to and in order to save the time of the recorder I will say that if further questions are asked as to whom Mr. Witkovich knows, my objection just made will stand in relation to every other such question.
Investigator: Objection overruled.

Investigator to respondent:

Q. Mr. Witkovich, do you refuse to answer the question about any of these individuals I have mentioned in asking you directly? Are you refusing to answer the question?

COUNSEL:

A. Mr. Witkovich has just answered through his attorney.

Investigator to respondent:

Q. Since the order of deportation was entered in your case on June 25, 1953, have you attended any meeting of the Communist Party of the U.S.A.?

COUNSEL:

A. Objected to as entering a phase of inquiry as to the rights of an individual which are guaranteed by the First Amendment to the Constitution of the United States, giving to every individual the right of lawful assembly without interference by any department.
Investigator: Objection overruled.

Investigator to respondent:

Q. Mr. Witkovich, why are you refusing to answer my questions that relate to organizations and publications?

COUNSEL:

A. Mr. Witkovich has indicated through his counsel the reasons for the objections made by his counsel and it is the opinion of his counsel that that is sufficient for the record; that the officer in charge has no right to inquire into the mental workings of the respondent just as long as the respondent is in complete compliance with the laws of the land, as he is and has been—certainly since the order of deportation was entered.

Investigator to respondent:

Q. Since the order of supervision was entered on March 4, 1954, have you attended any meeting of any organization other than the singing club?

69 Counsel: Objected to for the same reason as stated before.

Investigator: Objection overruled.

Investigator to respondent:

Q. Have you enlisted in your case, the deportation case, the aid of any organizations?

COUNSEL:

A. That is objected to as immaterial, irrelevant and as not being a proper source of inquiry for this department to make.

Investigator: Objection overruled.

Investigator to respondent:

Q. Have you addressed any lodges of the Slovene National Benefit Society requesting their aid in your case, since the order of deportation was entered June 25, 1953?

COUNSEL:

A. That is objected to as immaterial and irrelevant and improper for the reason that the matter of free speech and

lawful assembly is protected by the First Amendment to the Constitution.

Investigator: Objection overruled.

Investigator to respondent:

Q. Have you distributed petitions or leaflets published by the Slovene National Benefit Society seeking aid for you, in your behalf, in your deportation case since the order of deportation was entered June 25, 1953?

COUNSEL:

A. Objected to for the same reason and for the reason that lawful assembly, free speech, free publication and the right to distribute pamphlets if a person desires to do so is guaranteed by the Constitution.

Investigator: Objection overruled.

Investigator to respondent:

Q. I direct you, Mr. Witkovich, to answer that last question about the distribution of pamphlets. Do you refuse to answer?

69A COUNSEL:

A. Mr. Witkovich has answered through the objection of his counsel.

Investigator to respondent:

Q. Since the order of supervision have you attended any meetings or lectures at the Peoples Auditorium, 2457 West Chicago Avenue, Chicago, Illinois?

COUNSEL:

A. That is objected to for the same reasons as stated in the objections heretofore made.

Investigator: Objection overruled.

Investigator to respondent:

Q. Since the order of supervision was entered against you have you attended any meetings or socials at the Chopin Cultural Center, 1547 North Leavitt Street, Chicago?

Counsel: Objected to for the same reason.
Investigator: Objection overruled.

Investigator to respondent:

Q. Have you attended any movies since your order of supervision was entered, at the Cinema Annex, 3210 West Madison Street, Chicago?

COUNSEL:

A. As to whether the respondent goes to movies, the question would be answered by the same objections, that you have no right to inquire into his lawful activities, but the question was directed to a specific place where movies are shown, and the same objection is applicable and is therefore made to that question.
Investigator: Objection overruled.

Investigator to respondent:

Q. Are you acquainted with an individual named Irving Franklin?
Counsel: Objected to.
Investigator: Objection overruled.

70 Investigator to respondent:

Q. Are you now a member of the Communist Party of U.S.A.?
Counsel: Objected to as immaterial and not relevant to the issue, and it could be objected to on further grounds of which we are not availing ourselves but the question is objected to and the respondent will make no answer.
Investigator: Objection overruled.

Investigator to respondent:

Q. I again direct you, Mr. Witkovich, to answer the question, are you now a member of the Communist Party of the U.S.A.?
Counsel: Mr. Witkovich has answered through the objection made by his attorney.

Investigator to respondent:

Q. Do you belong to any organizations besides the Slovene National Benefit Society?

A. I belong to a fraternal organization in Pittsburgh. Slovene Eagle Society.

Q. What sort of an organization is that?

A. Fraternal, insurance and sick benefit—$1.00 a day, $250.00 death burial.

Q. Does it publish a publication?

A. No.

Q. Do you belong to any unions?

A. Yes.

Q. Would you like to name the union you belong to?

A. Newspaper Guild.

Q. Is that a Chicago local?

A. Yes.

Q. What number?

A. I don't know.

Q. Where are the headquarters?

A. I don't know.

Q. Do you hold office in that union?

A. No.

Q. Are you now or have you ever been a member of the Slovene American National Council?

71 Counsel: That is objected to for the same reasons as stated before.

Investigator: Objection overruled.

Investigator to respondent:

Q. Are you now or have you ever been a member of the United Committee of South Slavic Americans?

Counsel: Same objection.

Investigator: Objection overruled.

Investigator to respondent:

Q. Have you ever been a member of the American Slav Congress?

Counsel: Same objection.

Investigator to respondent:

Q. Why have you refused to answer so many numerous questions of mine this morning, Mr. Witkovich? On what grounds?

COUNSEL:

A. If Mr. Osterkorn requires any other grounds it seems quite superfluous and an absurb kind of question. You have no right to inquire as to why a respondent does or does not do anything unless he is violating the law and even then you have no right to inquire how his mind works. Numerous objections have been made to the questions put to the respondent for very obvious and constitutional reasons. If they do not satisfy the inquirer, it is very unfortunate but the respondent is following the advice of his counsel. He was informed that he might be here with counsel, and any further questions as to his reasons for not answering are superfluous and are objected to.

Investigator to respondent:

Q. On February 24, 1954 you were mailed at 2153 South Lawndale Avenue, Chicago, Mr. George Witkovich, a communication notifying you that an order had been entered on June 25, 1953 directing your deportation from the United States, and you were informed in that letter that under Section 242(e) of the Immigration and Nationality Act of 1952 any alien against whom an order of deportation was entered, if he wilfully fails or refuses to depart from the United States within a period of six months from the date of the order shall, upon conviction, be guilty of a felony and shall be imprisoned not more than 10 years. Did you receive such a letter a copy of which I now show you and your counsel?

72 A. I don't recall.

Investigator to counsel:

Q. Does Counsel know whether he received it?

A. Please amend your question if you desire. The fact is that this document, a copy of which you have just shown the respondent and myself, was served on the respondent in the office of the Immigration and Naturalization Service in the New Post Office Building on Canal and Van Buren Streets on March 4, 1954.

Investigator to respondent:

Q. Have you made application anywhere for travel documents necessary for your departure from the United States?

A. That affair is my counsel's. Counsel has already attended to that.

By COUNSEL:

On August 5, 1953 I wrote the Consulate General of Poland, 1301 North Ritchie Court, Chicago, Illinois, as follows:

> "I represent George Witkovich, a printer born about 56 years ago. He has resided in the United States for many years. Recently he was ordered deported on account of the fact, it was alleged, he had been a member of the Communist Party. He would like to ask permission of Poland to admit him to that country for permanent residence. Will you be good enough to send me the necessary documents for application."

On September 3, 1953 I received a letter from the Consulate General of the Republic of Poland at Chicago, Illinois, signed "Jon Sztuk, Vice-Consul" which says:

> "In response to your letter of August 5, 1953 regarding your client George Witkovich, this Consulate General is herewith sending you application for visa in triplicate. When these are properly filled out, kindly return to this office together with three photographs of the applicant."

On October 9, 1953 I again wrote the Polish Consulate, 1301 North Ritchie Court, Chicago, Illinois as follows:

> "Re: George Witkovich. I enclose application in duplicate of George Witkovich for a passport to Poland for permanent residence, together with three pictures. Will you be good enough to refer the matter to the appropriate agency and advise when action has been decided upon."

73 On October 13, 1953 I received a letter from the Consulate General of the Republic of Poland, at Chicago, Illinois, signed Wojciech Albrycht, Consul of Poland, which reads as follows:

> "This is to acknowledge receipt of yours of October 9, 1953, together with enclosures. Please be advised

that according to new regulations four questionnaires must be filled out by each applicant, and our home authorities also now require four photographs. Therefore we are herewith enclosing two more questionnaires to be filled out by your client, and when you return them also please send an additional photo of George Witkovich."

On November 3, 1953 I addressed the following letter to Wojciech Albrycht, Consul of Poland, 1301 North Ritchie Court, Chicago:

"Dear Sir:

Re: George Witkovich. Pursuant to direction in your letter of October 13, 1953, I enclose two additional copies of application for visa and two additional photographs of the above client. Thanking you for your consideration, I am".

That constitutes the total of the application and the correspondence with the government of Poland relative to accepting the respondent for permanent residence there. Since the last letter of mine dated October 9, 1953 the Chicago office of the Polish Consulate has been closed. I do not know whether this is the reason for their failure to reply to my last letter but nothing further has been received from them. It is impossible to obtain permission for the respondent to be accepted by any other country, to my knowledge at the present time, and I have made general inquiries, for the reason that the countries will not accept persons who are not citizens of those countries.

Investigator to counsel:

Q. Does that include Yugoslavia?

A. Yugoslavia also will not accept persons who are not at the present time citizens of Yugoslavia.

Investigator to respondent:

Q. Is there any other country you wish to be deported to, Mr. Witkovich, in the event you are deported?

By Counsel:

A. That has already been covered by the immigration hearing and is not part of the present inquiry.

74 Investigator to respondent:

Q. Have you any further statements you wish to make, Mr. Witkovich?
A. No.

Investigator to counsel:

Q. Does Counsel wish to make any further statements?
A. No.

Investigator to respondent:

Q. When the secretary has transcribed the notes, will you be willing to sign the statement?

By Counsel:

A. There is no need to sign any statement. The respondent was under oath.
Attest:

Louis J. Osterkorn,
Investigator

74a Stenographer's Certificate to foregoing transcript omitted in printing.

75 [File Endorsement Omitted]

76 IN THE UNITED STATES DISTRICT COURT

[Title omitted]

Order Re: Stipulation as to Record—July 18, 1956

On stipulation of the parties hereto,

It is ordered that the following documents shall be included as a part of the record on appeal to the Supreme Court of the United States:

1. Order of supervision served on defendant on March 4, 1954.

2. Sworn testimony given by the defendant herein on September 14, 1954.

3. Stipulation of the parties, with regard thereto.

Enter:

JOHN P. BARNES,
United States District Judge

Dated at Chicago, Illinois,
this 18th day of July, 1956.

77 IN UNITED STATES DISTRICT COURT

[Title omitted]

DOCKET ENTRIES

Vio: Section 1252(d), Title 8, United States Code.

(Alien pending deportation, failed to answer questions of an Officer of the Immigation & Naturalization Service.)

78 11-3-55 Filed Indictment JS2

11-3-55 Order issue bench warrant & fix bond at $4000.00 & that indictment be suppressed for service—Barnes, J.

11-4-55 On mo of U.S. order releasing suppressed indictment—Sullivan, J.,

11-4-55 Filed appearance of atty

11-4-55 Filed appearance bond $4,000.00 s

11-10-55 On mo deft plea & arr cont to Feb. 17, 1956 10 A.M. Deft given 30 days to file preliminary motions & Govt gv 20 days after to answer—Sullivan, J.

11—-55 Mailed notices s

12—-55 Filed warrant ret'd exctd

12-12-55 Filed mo to dismiss indictment (Witkovich) (6) s

12-29-55 On mo deft order extend time to Jan. 6, 1956 for filing brief in support of motion to dismiss indictment—Sullivan, J.

12-30-55 Mailed notices s

1-6-56 Filed brief in support of mo to dismiss indictment (JK)

1-26-56 Filed notice

1-26-56 Filed memorandum in opp to deft's mo to dismiss (JK)
2-15-56 Filed Memorandum (8)
2-15-56 Mo of deft to dism indivt overruled. (Memorandum)

Counsel for deft enters plea of not guilty for deft & cause set for trial Mar 26, 1956 10 A.M.—Sullivan, J.

2-16-56 Mailed notices s
2-28-56 Filed mo for clarification of Court's ruling denying deft's mo to dismiss with affidavit of mailing & notice
2-28-56 Arguments heard & concluded. Both sides ordered file briefs simultaneously within 10 days & 5 days thereafter to file reply briefs & mo U.S. for clarification Court's ruling taken under advst—Sullivan, J.
2-28-56 Mailed notices s
3-8-56 Filed notice
3-8-56 Filed add'l & suppl mo to dismiss (5)
3-8-56 Filed brief in suppr of add'l & suppl mo to dismiss (10)
3-9-56 Filed affidavit of mailing
3-9-56 Filed suppl brief in opp to mo to dismiss (JK)
3-15-56 Filed notice
3-15-56 Filed reply brief of Geo. I. Witkovich to Gov's suppl brief in opp to motion to dism indict (5)
3-22-56 Cs reset for trial from Mar 26 to May 31, 1956 10 A.M.—Sullivan, J.
3-22-56 Mo for bill particulars ent'd & taken under advst —Sullivan, J.
3-22-56 Filed notice
3-22-56 Filed mo for bill particulars
3-22-56 Mailed notices s
5-10-56 Filed Memorandum entered by Judge Sullivan (15)
5-10-56 Mo deft to dismiss indict sustained—Sullivan, J. JS3
5-10-56 Mailed notices s
6-8-56 Filed Notice of appeal to the Supreme Court of the United States by U.S.A. and Proof of service (3 & 1) B 5.00 US

79 Clerk's Certificate to foregoing transcript omitted in printing.

80 SUPREME COURT OF THE UNITED STATES

No. 295 —, October Term, 1956

[Title omitted]

APPEAL from the United States District Court for the Northern District of Illinois.

ORDER NOTING PROBABLE JURISDICTION—October 8, 1956

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

U. S. GOVERNMENT PRINTING OFFICE: 1956 406915 479